

## Senate Bill No. 2085

### CHAPTER 1048

An act to amend Sections 22110.1, 22122.5, 22155.5, 22200, 22202, 22304, 22307, 22311, 22402, 26000, 26000.5, 26004, 26105, 26112, 26114, 26115, 26116, 26128, 26129, 26134, 26137, 26200, 26201, 26202, 26204, 26206, 26207.5, 26209, 26300, 26301, 26400, 26401, 26402, 26501, 26503, 26504, 26506, 26603, 26701, 26702, 26703, 26704, 27301, 27401, 27409, 28100, and 28101 of, to add Sections 22001.5, 22403, and 26000.6 to, and to repeal Sections 26111, and 26207 of, the Education Code, relating to the State Teachers' Retirement System, and making an appropriation therefor.

[Approved by Governor September 30, 1998. Filed  
with Secretary of State September 30, 1998.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 2085, Burton. State Teachers' Retirement System Cash Balance Plan.

The State Teachers' Retirement Law prescribes retirement benefits for eligible teachers in the public schools and the State Teachers' Retirement System Cash Balance Plan provides retirement benefits for other persons employed in instructional programs for less than 50% of the full-time equivalent by school employers who have elected to provide those benefits for those employees. The separate retirement programs and their separate retirement funds are both administered by the Teachers' Retirement Board.

This bill would merge those programs, would provide that both are included in the State Teachers' Retirement Law, and that they would both be known and cited as the State Teachers' Retirement Plan. The bill would provide that costs of administration be divided proportionately between the assets of the separate programs. The bill would provide that a prior loan from the Teachers' Retirement Fund to the Cash Balance Plan would be discharged by the creation of the State Teachers' Retirement Plan. The bill would delete the Cash Balance Fund and its various accounts, would require contributions, earnings, and any other amounts provided under that plan to be deposited in the Teachers' Retirement Fund and would provide that the Teachers' Retirement Fund is continuously appropriated for the payment of benefits under the Cash Balance Benefit Program. The bill would delete the Cash Balance Benefit Plan Expense Account and would authorize all administrative costs of the Cash Balance Benefit Program from the Teachers' Retirement Fund. The bill would make other related changes.

Appropriation: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 22001.5 is added to the Education Code, to read:

22001.5. The Legislature hereby finds and declares that on July 1, 1996, the State Teachers' Retirement System Cash Balance Plan was created and established to provide a retirement plan for persons employed to perform creditable service for less than 50 percent of the full-time equivalent for the position. The persons eligible for the Cash Balance Plan were excluded from mandatory membership in the State Teachers' Retirement System Defined Benefit Plan. Both plans are administered by the Teachers' Retirement Board. Prior to the creation and establishment of the Cash Balance Plan, the State Teachers' Retirement System Defined Benefit Plan had been identified simply as the State Teachers' Retirement System. As a result, the system was identified as both the administrative body and the retirement plan. The State Teachers' Retirement Law was amended to identify the retirement plan as the State Teachers' Retirement System Defined Benefit Plan in order to distinguish that plan from the Cash Balance Plan. Because both plans were intended to provide for the retirement of teachers and other persons employed in connection with public schools of this state and schools supported by this state, a merger of these two plans is now hereby made for the purpose of establishing a single retirement plan that shall be known and may be cited as the State Teachers' Retirement Plan consisting of the different benefit programs set forth in this part and Part 14 (commencing with Section 26000). This plan shall be administered by the Teachers' Retirement Board as set forth in this part and Part 14 (commencing with Section 26000). This part, together with Part 14 (commencing with Section 26000) shall be known and may be cited as the Teachers' Retirement Law.

SEC. 2. Section 22110.1 of the Education Code is amended to read:

22110.1. "Cash Balance Benefit Program" means the benefit program of the State Teachers' Retirement Plan as set forth in Part 14 (commencing with Section 26000).

SEC. 3. Section 22122.5 of the Education Code is amended to read:

22122.5. "Defined Benefit Program" means the Defined Benefit Program provided in the State Teachers' Retirement Plan as set forth in this part.

SEC. 4. Section 22155.5 of the Education Code is amended to read:

22155.5. "Plan" means the State Teachers' Retirement Plan.

SEC. 5. Section 22200 of the Education Code is amended to read:

22200. (a) The plan and the system are administered by the Teachers' Retirement Board. The members of the board are as follows:

- (1) The Superintendent of Public Instruction.
- (2) The Controller.
- (3) The Treasurer.
- (4) The Director of Finance.
- (5) One person who, at the time of appointment, is a member of the governing board of a school district or a community college district.
- (6) Three persons who are either members of the Defined Benefit Program or participants in the Cash Balance Benefit Program, as follows:
  - (A) Two persons who, at the time of appointment, are classroom teachers in kindergarten or grades 1 through 12.
  - (B) One person who, at the time of appointment, is a community college instructor with expertise in the areas of business or economics or both business and economics and who shall be appointed by the Governor for a term of four years from a list submitted by the Board of Governors of the California Community Colleges.
  - (7) One person who is either a retired member under this part or a retired participant under Part 14 (commencing with Section 26000).
  - (8) One officer of a life insurance company appointed by the Governor for a term of four years, subject to confirmation by the Senate.
  - (9) One officer of a bank or a savings and loan institution who has had at least five years of broad professional investment experience handling various asset classes such as stocks, bonds, and mortgage investments and who shall be appointed by the Governor for a term of four years, subject to confirmation by the Senate.
  - (10) One person representing the public, appointed by the Governor for a term of four years, subject to confirmation by the Senate.
- (b) The members of the board described in paragraphs (5) and (7) and subparagraph (A) of paragraph (6) of subdivision (a) shall be appointed by the Governor for four-year terms from a list submitted by the Superintendent of Public Instruction.
- (c) The members of the board shall annually elect a chairperson and vice chairperson.

SEC. 6. Section 22202 of the Education Code is amended to read:

22202. The board has exclusive control of the administration of the funds. No transfers or disbursements of any amount from the funds shall be made except upon the authorization of the board for the purpose of carrying into effect the provisions of this part and Part 14 (commencing with Section 26000).

SEC. 7. Section 22307 of the Education Code is amended to read:



22307. (a) The board may authorize the transfer and disbursement of funds from the retirement fund for the purpose of carrying into effect this part and Part 14 (commencing with Section 26000) upon the signature of either or both of its chairperson and vice chairperson or the chief executive officer or any employee of the system designated by the chief executive officer.

(b) Notwithstanding Section 13340 of the Government Code, the board may disburse funds for the payment of benefits to members and beneficiaries of the Defined Benefit Program as well as to participants and beneficiaries of the Cash Balance Benefit Program, for the payment of refunds and for investment transactions and these funds shall not be required to be appropriated through the annual Budget Act. Funds for the payment of administrative expenses are not continuously appropriated, and shall be appropriated by the annual Budget Act.

SEC. 7.5. Section 22304 of the Education Code is amended to read:

22304. (a) The costs of administration of the plan shall be paid from the retirement fund and those costs may not exceed the amount made available by law during any fiscal period.

(b) The administrative costs of the plan shall be divided proportionately in accordance with the assets of the Defined Benefit Program and the Cash Balance Benefit Program.

SEC. 8. Section 22311 of the Education Code is amended to read:

22311. (a) The board shall keep in convenient form any data necessary for the actuarial valuation of the plan.

(b) The board shall make an actuarial investigation into the mortality, service, and other experience of members and beneficiaries of the Defined Benefit Program as well as an actuarial review of the goals regarding the sufficiency of the Gain and Loss Reserve with respect to the Cash Balance Benefit Program. This investigation and review shall include an actuarial valuation of the assets and liabilities of the plan, and shall be performed at least once every six years. The actuary shall perform the actuarial valuation using actuarial assumptions adopted by the board and that are, in the aggregate, reasonably related to the past experience of the plan and the best estimate by the actuary of the future experience of the plan. The report of the actuary of the results of the actuarial valuation shall identify and include the components of normal cost and adequate information to determine the effects of changes in actuarial assumptions. Copies of the report on the actuarial valuation shall be transmitted to the Governor and to the Legislature. Upon the basis of any or all of the actuarial investigation and valuation, the board shall adopt for the plan any rates of return on investments, rates of contribution to the retirement fund, mortality, service, and other tables it deems necessary.

SEC. 9. Section 22402 of the Education Code is amended to read:



22402. Earned interest with respect to the Defined Benefit Program that is not credited to accounts maintained pursuant to either this part or Part 14 (commencing with Section 26000) and other income with respect to the Defined Benefit Program shall be allocated to provide benefits under this part.

SEC. 10. Section 22403 is added to the Education Code, to read:

22403. The Legislature hereby finds and declares that pursuant to the authorizing legislation creating and establishing the Cash Balance Plan, the board transferred one million dollars (\$1,000,000) in the form of a loan from the retirement fund holding assets at that time exclusively for the State Teachers' Retirement System Defined Benefit Plan to the newly created Cash Balance Plan. That loan represented an asset receivable to the State Teachers' Retirement System Defined Benefit Plan and a liability obligation to the State Teachers' Retirement System Cash Balance Plan. As a result of the merger of these two plans authorized under this part, the assets held in the retirement fund shall hereby reflect the combined assets of the State Teachers' Retirement Plan. That loan shall be discharged by the creation and establishment of the State Teachers' Retirement Plan pursuant to the merger.

SEC. 11. Section 26000 of the Education Code is amended to read:

26000. The Legislature hereby finds and declares that the State Teachers' Retirement System Cash Balance Plan was created and established on July 1, 1996, to provide a retirement plan for persons employed to perform creditable service for less than 50 percent of the full-time equivalent for the position. The persons eligible for the Cash Balance Plan were excluded from mandatory membership in the State Teachers' Retirement System Defined Benefit Plan. Both plans are administered by the Teachers' Retirement Board. Because both plans were intended to provide for the retirement of teachers and other persons employed in connection with the public schools of this state and schools supported by this state, a merger of these two plans is now hereby made for the purpose of establishing a single retirement plan that shall be known and may be cited as the State Teachers' Retirement Plan consisting of the different benefit programs set forth in this part and Part 13 (commencing with Section 22000). The plan shall be administered by the Teachers' Retirement Board as set forth in this part and Part 13 (commencing with Section 22000). As a result of this merger, a Cash Balance Benefit Program will be provided under the State Teachers' Retirement Plan and that program is set forth in this part.

The governing board of a school district, community college district, or county office of education may, by formal action, elect to provide the benefits of the Cash Balance Benefit Program under this part for their employees.

SEC. 12. Section 26000.5 of the Education Code is amended to read:

26000.5. (a) An employer whose governing board has elected to provide the benefits of this part for its employees pursuant to Section 26000 shall enter into an agreement with the State Teachers' Retirement System. The agreement shall specify the terms and conditions of the employer's formal action to provide the Cash Balance Benefit Program and shall remain in effect unless or until the employer exercises the right to discontinue the plan pursuant to Chapter 17 (commencing with Section 28100).

SEC. 13. Section 26000.6 is added to the Education Code, to read:

26000.6. (a) An election by any employer to provide the benefits of the Cash Balance Plan for their employees prior to the merger described in Section 26000 shall be deemed to constitute an election to provide the Cash Balance Benefit Program under the State Teachers' Retirement Plan.

(b) Participation in the Cash Balance Plan by any participant prior to the merger described in Section 26000 shall be deemed to constitute participation in the Cash Balance Benefit Program under the State Teachers' Retirement Plan.

(c) Any beneficiary under the Cash Balance Plan prior to the merger described in Section 26000 shall be deemed to be a beneficiary under the Cash Balance Benefit Program under the State Teachers' Retirement Plan.

SEC. 14. Section 26004 of the Education Code is amended to read:

26004. Notwithstanding any other provision of law:

(a) The benefits payable to any participant or beneficiary under this part shall be subject to the limitations imposed by Section 415 of Title 26 of the United States Code.

(b) The amount of compensation that is taken into account in computing benefits under this part for a plan year shall not exceed the annual compensation limit applicable to that plan year in accordance with Section 401(a)(17) of Title 26 of the United States Code as that section read on the effective date of this section and as that section may be amended after that date. The determination of compensation for a 12-month period shall be subject to the annual compensation limit in effect for the calendar year in which the 12-month period begins. In a determination of average compensation over more than one 12-month period, the amount of compensation taken into account for each 12-month period shall be subject to the respective annual compensation limit applicable to that period.

(c) Distributions from the plan under this part shall be made in accordance with Section 401(a)(9) of Title 26 of the United States Code, including the incidental death benefit requirements of Section 401(a)(9)(G) and the regulations thereunder. The required beginning date of benefit payments that represent the entire interest of the participant shall be as follows:

(1) In the case of a lump-sum distribution of a retirement benefit, disability benefit, or termination benefit, the lump-sum payment



shall be made not later than April 1 of the calendar year following the later of the calendar year in which the participant attains the age of 70<sup>1</sup>/<sub>2</sub> years or the calendar year in which the participant terminates all employment subject to coverage by the plan.

(2) In the case of a retirement benefit or disability benefit that is to be paid in the form of an annuity, payment of the annuity shall begin not later than April 1 of the calendar year following the later of the calendar year in which the participant attains the age of 70<sup>1</sup>/<sub>2</sub> years or the calendar year in which the participant terminates employment in all positions subject to coverage by the plan, with the annuity to continue over the life of the participant or the life of the participant and the participant's option beneficiary, or over a period not to exceed the life expectancy of the participant or the life expectancy of the participant and the participant's option beneficiary.

(3) In the case of a death benefit, distributions shall commence no later than the date provided in Section 27001.

(d) If a person becomes entitled to a distribution from the plan under this part that constitutes an eligible rollover distribution within the meaning of Section 401(a)(31) of Title 26 of the United States Code, the person may elect under terms and conditions established by the board to have the distribution or a portion thereof paid directly to a plan that constitutes an eligible retirement plan within the meaning of Section 401(a)(31), as specified by that person. Upon the exercise of the election by a person with respect to a distribution or a portion thereof, the distribution from the plan of the amount so designated, once distributable under the terms of the plan, shall be made in the form of a direct rollover to the eligible retirement plan so specified.

(e) The amount of any benefit from the plan under this part which is determined on the basis of actuarial assumptions shall be based on actuarial assumptions adopted by the board pursuant to Section 26213 as a plan amendment with respect to the Cash Balance Benefit Program and those assumptions shall preclude employer discretion and comply with Section 401(a)(25) of Title 26 of the United States Code.

SEC. 15. Section 26105 of the Education Code is amended to read:

26105. "Annuitant Reserve" means the reserve account established by the board within the State Teachers' Retirement Fund for the payment of monthly annuities with respect to the Cash Balance Benefit Program.

SEC. 16. Section 26111 of the Education Code is repealed.

SEC. 17. Section 26112 of the Education Code is amended to read:

26112. "Cash Balance Benefit Program" means the benefit program set forth in this part of the State Teachers' Retirement Law.

SEC. 18. Section 26114 of the Education Code is amended to read:

26114. “Death benefit” means the benefit payable under this part upon the death of the participant.

SEC. 19. Section 26115 of the Education Code is amended to read:

26115. “Defined Benefit Program” means the Defined Benefit Program of the State Teachers’ Retirement Plan as set forth in Part 13 (commencing with Section 22000).

SEC. 20. Section 26116 of the Education Code is amended to read:

26116. “Disability benefit” means an amount payable under this part for permanent and total disability that is equal to the sum of the participant’s employee account and employer account as of the disability date and is payable pursuant to either Section 26905 or 26906.

SEC. 21. Section 26128 of the Education Code is amended to read:

26128. “Fund” means the Teachers’ Retirement Fund.

SEC. 22. Section 26129 of the Education Code is amended to read:

26129. “Gain and Loss Reserve” means the reserve account established by the board within the fund with respect to the Cash Balance Benefit Program to be drawn upon to the extent necessary to credit interest to employee accounts and employer accounts at the minimum interest rate during years in which the plan’s investment earnings with respect to the Cash Balance Benefit Program are not sufficient for that purpose, and where necessary, to provide additions to the Annuitant Reserve for monthly annuity payments.

SEC. 23. Section 26134 of the Education Code is amended to read:

26134. “Plan” means the State Teachers’ Retirement Plan.

SEC. 24. Section 26137 of the Education Code is amended to read:

26137. “Retirement benefit” means an amount payable under this part in the event of the participant’s retirement for service that is equal to the sum of the participant’s employee account and employer account as of the retirement date and that is payable pursuant to either Section 26806 or 26807.

SEC. 25. Section 26200 of the Education Code is amended to read:

26200. Employee contributions, employer contributions, investment earnings, and any other amounts provided under this part shall be deposited into the Teachers’ Retirement Fund. Disbursement of money from the fund shall be made upon claims made pursuant to Section 26209 and duly audited in the manner prescribed for the disbursement of other public funds. Notwithstanding Section 13340 of the Government Code, the Teachers’ Retirement Fund is continuously appropriated for the payment of benefits and investment transactions pursuant to this part. Disbursements may be made to return funds deposited in the fund in error.

SEC. 26. Section 26201 of the Education Code is amended to read:

26201. Investment earnings shall be collected by the Treasurer, and together with any other moneys received in connection with the



Cash Balance Benefit Program, shall be immediately deposited to the credit of the Teachers' Retirement Fund and reported to the system.

SEC. 27. Section 26202 of the Education Code is amended to read:

26202. (a) The board shall establish a Gain and Loss Reserve within the Teachers' Retirement Fund for the Cash Balance Benefit Program. The board has sole authority to administer the Gain and Loss Reserve to be drawn upon to the extent necessary to credit interest to employee accounts and employer accounts at the minimum interest rate during years in which the investment earnings of the plan with respect to the Cash Balance Benefit Program are not sufficient for that purpose, and, where necessary, to provide additions to the Annuitant Reserve for monthly annuity payments.

(b) The board shall establish and periodically review goals regarding the sufficiency of the Gain and Loss Reserve based on the recommendation of the actuary.

(c) In the event that the total amount of investment earnings of the plan with respect to the Cash Balance Benefit Program for any plan year exceeds the sum of the total amount required to credit all employee and employer accounts at the minimum interest rate for the plan year plus the administrative costs of the plan with respect to the Cash Balance Benefit Program for the plan year, the board shall determine the amount, if any, that is to be credited to the Gain and Loss Reserve for the plan year. That determination shall be made not later than December 31 of the year following the plan year. In determining whether an amount is to be credited to the Gain and Loss Reserve, the board shall consider the sufficiency of the reserve in light of the goal established for the sufficiency and the recommendations of the actuary.

SEC. 28. Section 26204 of the Education Code is amended to read:

26204. The board shall establish an Annuitant Reserve within the Teachers' Retirement Fund for the Cash Balance Benefit Program. The board has sole authority to administer the Annuitant Reserve for the payment of annuities. The board may transfer the credits from a participant's employee account and employer account to the Annuitant Reserve upon election of an annuity by the participant or beneficiary of the participant.

SEC. 29. Section 26206 of the Education Code is amended to read:

26206. All administrative costs of the board and system for the plan with respect to the Cash Balance Benefit Program shall be paid from the Teachers' Retirement Fund.

SEC. 30. Section 26207 of the Education Code is repealed.

SEC. 31. Section 26207.5 of the Education Code is amended to read:

26207.5. In no event shall the funding of the Cash Balance Benefit Program be a liability of the state or the General Fund, nor shall the

General Fund be used to offset or fund any liabilities attributed to the operation of the Cash Balance Benefit Program.

SEC. 32. Section 26209 of the Education Code is amended to read:

26209. The board may authorize the transfer and disbursement of funds from the Teachers' Retirement Fund for the purpose of carrying into effect the Cash Balance Benefit Program upon the signature of its chairperson, vice chairperson, the chief executive officer, or any employee of the system designated by the chief executive officer.

SEC. 33. Section 26300 of the Education Code is amended to read:

26300. (a) Within 10 working days following the later of the first day of employment, the date of the employer's governing board's action to provide the Cash Balance Benefit Program, or the effective date of the employer's governing board's action to provide the Cash Balance Benefit Program, the employer shall make available to the employee the following information:

(1) The employee's rights and responsibilities as a participant in the program, the employer's responsibilities under the program, and the benefits payable under the program.

(2) The employee's right to elect membership in the Defined Benefit Program in lieu of participation in the Cash Balance Benefit Program, the rights and responsibilities of a member and the employer under the Defined Benefit Program, and benefits payable under the Defined Benefit Program.

(b) Written acknowledgment by the employee that he or she has received the information specified in subdivision (a) shall be retained in the employer's files on a form prescribed by the system.

(c) If an employer's governing board's action to provide the Cash Balance Benefit Program gives employees the right to elect other coverage in lieu of the Cash Balance Benefit Program pursuant to Section 26400, the employer shall, within 10 working days following the later of the first day on which creditable service is performed, the date of the employer's governing board's action to provide the program or the effective date of the employer's governing board's action to provide the program, notify existing employees of the following:

(1) The employee's right to elect other coverage if offered by the employer in lieu of participation in the Cash Balance Benefit Program.

(2) The rights and responsibilities of the employer and a participant in an alternative retirement plan if offered by the employer.

(3) The benefits payable under an alternative retirement plan if offered by the employer.

SEC. 34. Section 26301 of the Education Code is amended to read:

26301. (a) Employers shall report, on a form prescribed by the system, contributions paid on behalf of each participant in each pay

period, along with all other information required by the system no later than 15 calendar days following the last day of the pay period in which the salary was paid, and the report is delinquent immediately thereafter.

(b) The board may assess a penalty against the employer for a report submitted late or in an unacceptable form.

SEC. 35. Section 26400 of the Education Code is amended to read:

26400. (a) A person employed to perform creditable service for less than 50 percent of the full-time equivalent for the position shall become a participant on the later of the first day on which creditable service is performed for an employer that provides the Cash Balance Benefit Program or the effective date of the employer's governing board's action to provide the Cash Balance Benefit Program, provided the person is not subject to mandatory membership in the Defined Benefit Program except as provided in Section 26402.

(b) If the employer's governing board's action to provide the Cash Balance Benefit Program gives employees the right to elect coverage under social security or an alternative retirement plan offered by the employer in addition to the Cash Balance Benefit Program, the employee may elect within 60 calendar days of the later of the first day on which creditable service is performed, the date of the employer's governing board's action to provide the Cash Balance Benefit Program, or the effective date of the employer's governing board's action to provide the Cash Balance Benefit Program to be covered by social security or to participate in the alternative retirement plan in lieu of participating in the Cash Balance Benefit Program. Any election shall not preclude an employee from participating in the Cash Balance Benefit Program at a later date so long as the Cash Balance Benefit Program is provided by the employer and the employee is eligible to participate in the Cash Balance Benefit Program.

(c) If subdivision (b) is applicable, the employer shall inform employees pursuant to subdivision (c) of Section 26300 of their right to make an election and the election shall be made on a form prescribed by the system and filed with the employer. The election shall become effective on the later of the first day on which creditable service is performed or the effective date of the employer's governing board's action to provide the Cash Balance Benefit Program.

(d) If the participant's basis of employment with an employer that provides the Cash Balance Benefit Program changes to employment to perform creditable service for 50 percent or more of the full-time equivalent for the position, contributions to the Cash Balance Benefit Program on behalf of the participant shall no longer be made and creditable service performed for that employer and all other employers shall be subject to coverage by the Defined Benefit Program as of the first day of the pay period in which the change in



the participant's basis of employment occurred, except as provided in Section 26402.

SEC. 36. Section 26401 of the Education Code is amended to read:

26401. (a) A member of the Defined Benefit Program who is employed to perform creditable service for less than 50 percent of the full-time equivalent for the position for an employer that provides the Cash Balance Benefit Program may elect to become a participant for creditable service subject to coverage under the Cash Balance Benefit Program for that employer provided that the creditable service is not performed for the same employer with whom the member is also subject to mandatory membership in the Defined Benefit Program.

(b) The election shall be made on a form prescribed by the system and shall be filed with the employer within 60 calendar days of the later of the first day of employment with an employer that provides the Cash Balance Benefit Program, the date of the employer's governing board's action to provide the Cash Balance Benefit Program, or the effective date of the employer's governing board's action to provide the Cash Balance Benefit Program.

(c) Employers shall make available to employees specified in subdivision (a) information and forms provided by the system for making an election regarding participation, and shall maintain the written election by the employee in employer files. The election shall become effective on the first day of the pay period following the pay period in which the election is made.

(d) If an election is made pursuant to subdivision (a) and the participant's basis of employment with that employer changes to employment to perform creditable service for 50 percent or more of the full-time equivalent for the position, contributions to the Cash Balance Benefit Program on behalf of the participant shall no longer be made and creditable service performed for that employer and all other employers shall be subject to coverage under the Defined Benefit Program as of the first day of the pay period in which the change in the participant's basis of employment occurred, except as provided in Section 26402.

SEC. 37. Section 26402 of the Education Code is amended to read:

26402. A member of the Defined Benefit Program who is employed by an employer on a full-time basis to perform creditable service subject to coverage under the Defined Benefit Program, may participate in the Cash Balance Benefit Program for creditable service performed for a different employer if the different employer provides the Cash Balance Benefit Program and would otherwise contribute to social security or an alternative retirement plan on behalf of the member for that service.

SEC. 38. Section 26501 of the Education Code is amended to read:

26501. Except as provided in Section 26504, the participant shall contribute an amount equivalent to 4 percent of salary.

SEC. 39. Section 26503 of the Education Code is amended to read:

26503. Except as provided in Sections 26504 and 26507, the employer shall contribute an amount equivalent to 4 percent of salary for each participant employed by the employer.

SEC. 40. Section 26504 of the Education Code is amended to read:

26504. The employer may enter into a collective bargaining agreement to pay a different employer contribution rate and a different employee contribution rate, provided all of the following conditions are met:

(a) The sum of the employee contributions and employer contributions for each participant shall equal or exceed 8 percent of salary.

(b) The employee contribution rate shall not exceed the employer contribution rate.

(c) The employee contribution rate and employer contribution rate shall be the same for each participant employed by the employer.

(d) The employee contribution rate and employer contribution rate shall be in one-quarter percent increments.

(e) The employee contribution rate and employer contribution rate as determined under the collective bargaining agreement shall become effective on the first day of the plan year following notification to the system and shall remain in effect for at least one plan year. However, the employee contribution rate and the employer contribution rate as determined under the collective bargaining agreement may become effective as of the first day of the plan year in which notice is given if it is so provided in the collective bargaining agreement and if a lump-sum contribution is made to the plan equal to the additional employee and employer contributions, if any, that would have been required if the contribution rates had been in effect on the first day of the plan year. Interest shall be credited at the minimum interest rate with respect to the lump-sum contribution commencing with the first month after the contribution is made.

(f) The employer has filed notice of the employee contribution rate and the employer contribution rate on a form prescribed by the system.

SEC. 41. Section 26506 of the Education Code is amended to read:

26506. (a) Except as provided in subdivision (b), participants shall not make voluntary pretax or post-tax contributions into the Cash Balance Benefit Program, nor shall participants redeposit amounts previously distributed from employee accounts or employer accounts.

(b) Pursuant to terms and conditions established by the board, participants may be permitted to transfer funds from eligible retirement plans into the Cash Balance Benefit Program to the extent that the transfers are allowable under and are completed in



a manner prescribed by applicable federal and state laws, and any related regulations.

(c) Funds deposited with the Cash Balance Benefit Program by a participant pursuant to subdivision (b) shall be credited to the participant and identified separately from credits in the participant's employee and employer accounts. Funds so deposited shall be credited with interest pursuant to Section 26604.

SEC. 42. Section 26603 of the Education Code is amended to read:

26603. All employee contributions shall be credited to employee accounts and all employer contributions shall be credited to employer accounts as of the first calendar day following the date the contributions are received by the system.

SEC. 43. Section 26701 of the Education Code is amended to read:

26701. The right of a participant to a benefit under this part, whether by lump sum or annuity, is not subject to execution or any other process whatsoever, except to the extent permitted by Section 704.110 of the Code of Civil Procedure, and is unassignable except as specifically provided under this part.

SEC. 44. Section 26702 of the Education Code is amended to read:

26702. (a) For the purpose of payments into or out of the fund for adjustments of errors or omissions with respect to the Cash Balance Benefit Program, the period of limitation shall be applied as follows:

(1) No action may be commenced by or against the board, the system, or the plan more than three years after all obligations to or on behalf of the participant or beneficiary have been discharged.

(2) In cases where the system makes an error resulting in incorrect payment to the participant or beneficiary, the system's right to commence recovery shall expire three years from the date of payment.

(3) If an erroneous payment is made due to lack of information or inaccurate information regarding eligibility of a participant or beneficiary to receive a benefit from the Cash Balance Benefit Program, the period of limitation shall commence when the system discovers the erroneous payment.

(b) Notwithstanding any other provision of this section, if any erroneous payment has been made on the basis of fraud or intentional misrepresentation by a participant or beneficiary, or other party in relation to or on behalf of a participant or beneficiary, the three-year period of limitation shall not be deemed to commence or to have commenced until the system discovers the erroneous payment.

SEC. 45. Section 26703 of the Education Code is amended to read:

26703. The signature of the spouse of a participant shall be required on a designation of beneficiary form or an application for a retirement benefit, disability benefit, or termination benefit under this part, unless the participant declares in writing, under penalty of perjury, that one of the following conditions exists:



- (a) The participant is not married.
- (b) The participant does not know, and has taken all reasonable steps to determine, the whereabouts of the spouse.
- (c) The spouse is incapable of executing the acknowledgment because of an incapacitating mental or physical condition.
- (d) The participant and spouse have executed a marriage settlement agreement pursuant to Part 5 (commencing with Section 1500) of Division 4 of the Family Code that makes the community property law inapplicable to the marriage.
- (e) The current spouse has no identifiable community property interest in the benefit.

SEC. 46. Section 26704 of the Education Code is amended to read:

26704. If a spouse refuses to sign a beneficiary designation, an application for a retirement benefit, disability benefit, or termination benefit payable under this part, the participant may bring an action in court to enforce the spousal signature requirement or to waive the spousal signature requirement. Either party may bring an action pursuant to Section 1101 of the Family Code to determine the rights of the party.

SEC. 47. Section 27301 of the Education Code is amended to read:

27301. (a) The plan's obligations under this part to a participant or beneficiary who elected to receive a benefit in the form of an annuity, cease upon distribution of the final monthly payment of the annuity.

(b) Deposit in the United States mail of a warrant drawn as directed by the participant or beneficiary and addressed as directed by the participant or beneficiary constitutes distribution of the benefit under this part.

(c) Deposit in the United States mail of a notice that the requested electronic funds transfer has been made as directed by the participant or beneficiary constitutes distribution of the benefit under this part.

(d) Distribution under subdivision (b) or (c) pursuant to the board's determination in good faith of the existence, identity, or other facts relating to entitlement of persons constitutes a complete discharge and release of the board, system, and plan from liability for payments under this part.

SEC. 48. Section 27401 of the Education Code is amended to read:

27401. For purposes of this chapter, "nonparticipant spouse" means the spouse or former spouse who is being or has been awarded a community property interest in the benefits determined by reference to the amounts credited to a participant's employee and employer accounts or the participant's annuity. A nonparticipant spouse who is awarded separate nominal accounts is not a participant in the Cash Balance Benefit Program. A nonparticipant spouse who receives or is awarded an interest in a participant's annuity is not a participant in the Cash Balance Benefit Program.

SEC. 49. Section 27409 of the Education Code is amended to read:

27409. Upon being awarded separate nominal accounts or an interest in the annuity of a participant, a nonparticipant spouse shall provide the system with proof of his or her date of birth, social security number, and any other information requested by the system, in the form and manner requested by the system.

SEC. 50. Section 28100 of the Education Code is amended to read:

28100. (a) The employer may discontinue providing the Cash Balance Benefit Program at anytime in accordance with the terms and conditions of the employer's governing board's formal action to provide the program.

(b) The employer shall notify the system of the decision to discontinue the plan no less than 90 calendar days prior to the effective date of discontinuance. Such notice shall be submitted on a form prescribed by the system.

SEC. 51. Section 28101 of the Education Code is amended to read:

28101. (a) Upon discontinuation of the Cash Balance Benefit Program by the employer, the system will hold the employee and employer accounts for the benefit of the participant. The participant is immediately vested in both employee and employer accounts including accrued interest.

(b) Both employee and employer accounts will continue to be credited with interest at the minimum interest rate so long as there is an undistributed balance in such accounts.

